IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

A.O. No. 339 of 2003

Date of decision: 21st February, 2006

A.F.R. (Approved for Reporting)

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~~Not Approved for Reporting~~

Date 21.2.2006. Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 339 of 2003

Balbir Singh s/o Sri Harnam Singh
R/o Village Bannakhera,
P.S. & Tehsil Bazpur,
Distt. Udham Singh Nagar …Appellant

Versus

1. Munna Singh S/o Sri Pyare Lal,
   R/o Samatal P.O. and P.S. Pakbara,
   District Moradabad, U.P.
   (Registered owner of Truck UTJ-2412)

2. The National Insurance Company Ltd.
   Branch Moradabad through
   Divisional Manager, Divisional Office,
   The National Insurance Company Ltd.,
   Branch Office IInd Deepak Building,
   Station Road, Moradabad, U.P. …Respondents

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Mr. Dharamveer, Senior Advocate for the Appellant.
None for the Respondent No. 1.
Mr. D.S.Patni, Advocate for the Respondent No. 2.

JUDGMENT

Coram: Hon. Rajeev Gupta, C. J.
Hon. M.M.Ghildiyal, J.

Rajeev Gupta,C. J. (Oral)

Mr. Dharamveer, Senior Advocate for the appellant.

None for the first respondent.

Mr. D. S. Patni, Advocate for the second respondent.

2. This is claimant's appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal/Additional District Judge-First Fast Track Court, Udham Singh Nagar vide Award dated 22.07.2003 passed in Motor Accident Claim Petition No. 93 of 2001.

3. Claimant Balbir Singh claimed compensation of Rs. 18,00,000/- for the injuries suffered by him in the motor accident when on 30.05.1999 first respondent Munna Singh brought his truck bearing no. UTJ 2412 driving rashly and negligently and dashed the claimant resulting in serious injuries to him. The claimant pleaded that he was an agriculturist having 12 acres of land. It was further pleaded that the petitioner was earning Rs. 15000/- per acre and on account of the injuries suffered by him in the accident, he has been deprived of substantial part of that income as he was forced to lease out his agricultural land @ Rs. 5000/- per acre.

4. Respondent no. 1 Munna Singh, driver of the offending vehicle and Respondent no.2 National Insurance Company Ltd., insurer of the offending vehicle contested the claim. The Insurance Company disowned its liability to pay compensation to the claimant on the ground that the driver of the vehicle was not holding a valid and effective driving licence at the time of the accident and that the truck was being plied in breach of the policy conditions.

5. The Tribunal on the evidence led by the parties held that claimant Balbir Singh sustained grievous injuries in the accident and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle-truck. The Tribunal further found that on account of the injuries sustained by claimant Balbir Singh in the accident, he had to suffer amputation of his right leg above knee. The Tribunal held that the insurer of the offending vehicle was liable to pay compensation to the claimant. On the evidence led by the claimant about his income and the amount spent on treatment, the Tribunal awarded a sum of Rs. 1,06,080/- towards medical expenses and a further sum of Rs. 57,600/- towards permanent disability suffered by the claimant. Thus, a total sum of Rs. 1,63,680/- was awarded as compensation to the claimant for the injuries suffered by him in the accident with interest @ 6% per annum from 04.04.2002.

6. Mr. Dharamveer, learned counsel for the appellant submits that the Tribunal erred in awarding low compensation of Rs. 1,63,680/- only

though the appellant suffered amputation of his right leg on account of the injuries suffered by him in the accident.

7. Mr. D.S.Patni, learned counsel for the second respondent National Insurance Company Ltd.- insurer of the offending vehicle on the other hand supports the award and submits that the compensation of Rs. 1,63,680/- awarded by the Tribunal is rather on the higher side as the petitioner can get his agricultural land cultivated though agricultural labourer and would not suffer much loss so far as his income from agricultural land is concerned.

8. As the respondents have not filed any appeal against the Award, the findings recorded by the Tribunal that the claimant suffered injuries in the accident and that the accident occurred due to rash and negligent driving of the offending vehicle and that the insurer of the offending vehicle was liable to pay the compensation to the claimant have attained finality.

9. It is not in dispute that the claimant Balbir Singh sustained multiple injuries in the accident which occurred due the rash and negligent driving of the driver of the offending vehicle. It is also not in dispute that claimant Balbir Singh had to suffer amputation of his right leg on account of the injuries sustained by him in the accident. Claimant Balbir Singh was 55 years of age at the time of the accident. There is sufficient material on record to establish that the claimant had 12 acres of agricultural land.

10. The amount of Rs. 1,06,080/- awarded by the Tribunal towards medical expenses is based on bills and vouchers adduced in evidence by the claimant before the Tribunal. On thorough scrutiny of the evidence led by the claimant in that behalf and the bills and vouchers produced before the Tribunal, we are satisfied that the amount awarded by the Tribunal towards medical expenses does not call for any enhancement.

11. But, the same is not true about the amount of Rs. 57,600/- awarded by the Tribunal towards permanent disability, loss of income, loss of future

earning capacity and physical pain and mental suffering. This amount is certainly on lower side and deserves to be enhanced suitable.

12. The Apex Court, while considering the quantum of compensation in the case of Nagappa Vs. Gurudayal Singh and others reported in (2003) 2 SCC 274 wherein the claimant too was an agriculturist and suffered amputation of his leg and was awarded total compensation of Rs.1,00,000/- by the High Court, found that a total compensation of Rs.2,00,000/- would be just and reasonable compensation in the case. Considering the facts of the present case in the context of the above dictum of the Apex Court in the case of Nagappa Vs. Gurudayal Singh and others, we are also of the opinion that a lump sum compensation of Rs. 2,00,000/- would be just and proper compensation to the claimant for the injuries suffered by him in the accident leading to the amputation of his leg.

13. For the foregoing reasons, the appeal filed by the appellant is allowed in part. The compensation of Rs. 1,63,680/- awarded by the Tribunal is enhanced to Rs. 2,00,000/-. The enhanced amount of compensation shall carry interest @ 6% per annum from the date of application. No order as to costs.

(M.M.Ghildiyal , J.) **(Rajeev Gupta, C.J.)**

21.02.2006
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